

STATE OF MICHIGAN
IN THE SUPREME COURT

LACY HARTER and MIKE McCLELLAND,
As Co-Personal Representatives of the Estate of
KEGAN McCLELLAND, Deceased and LACY
HARTER, Individually and MIKE McCLELLAND,
Individually,

Plaintiffs-Appellees,

vs.

GRAND AERIE FRATERNAL ORDER OF EAGLES,

Defendant-Appellant,

and

HOWELL AERIE # 3607 FRATERNAL ORDER
OF EAGLES,

Defendant-Appellee,

and

MICHIGAN STATE AERIE FRATERNAL ORDER
OF EAGLES, HARRIS SEPTIC CLEANING AND
ALWAYS CLEAN PORTABLE TOILETS, INC.,
CONCRETE PRODUCTS, INC., Individually,

Defendants, Not Participating.

Supreme Court Docket
No: 126255

Court of Appeals Docket
No: 244689

Lower Court No:
00-17892-NO

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39611
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FILED

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NOTICE OF HEARING

PLAINTIFFS-APPELLEES' MOTION FOR RECUSAL
AND FOR EVIDENTIARY HEARING

BRIEF IN SUPPORT OF MOTION FOR RECUSAL
AND FOR EVIDENTIARY HEARING

EXHIBITS

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PLAINTIFFS-APPELLEES' MOTION FOR RECUSAL
AND FOR EVIDENTIARY HEARING

Plaintiffs-Appellees LACY HARTER and MIKE McCLELLAND, Personal Representatives of the Estate of KEGAN McCLELLAND, Deceased, by their undersigned counsel, hereby move this Honorable Court to recuse Justice Corrigan, Justice Markman, Justice Taylor, and Justice Young, pursuant to MCR 2.003 and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Plaintiffs further move for an evidentiary hearing. In support, Plaintiffs state that:

1. This appeal arises from a verdict for Plaintiffs in a wrongful death action seeking redress for the death of Kegan McClelland, a two year old child who died with excrement in his nose and mouth when he fell into an unlocked, open septic tank on property maintained by Defendant Grand Aerie Fraternal Order of Eagles.

2. In the trial court, Defendant undertook a course of conduct by which it concealed the identity of its insurers and policy limits, defied several Orders, thwarted meaningful settlement discussions, and delayed trial.

3. The trial court struck Defendant's Answer due to this misconduct but

permitted it to fully participate in the damage trial; the Court of Appeals has affirmed; Defendant has filed an Application for Leave; and this Court has issued an Order entertaining oral argument on the Application.

4. The issues presented include:

- a. Whether a defendant in civil litigation is allowed to falsify Answers to Interrogatories, lie about the identity of its insurers and policy limits, and thumb its nose at court Orders, without risk of having its Answer stricken; and
- b. Whether the verdict should be reversed because Plaintiff's counsel Geoffrey Fieger, **without objection**, read a poem to the jury.

5. Plaintiffs now file this Motion and Brief, respectfully requesting that Justice Corrigan, Justice Markman, Justice Taylor and Justice Young recuse themselves, or that an evidentiary hearing be scheduled.

6. In support of this Motion, Plaintiffs adopt and incorporate by reference the Affidavit of Geoffrey N. Fieger, the original of which was filed with this Court in *Gilbert v Daimler Chrysler* (S Ct Docket No. 122457), a copy of which is attached as Exhibit 1.

7. As further support for this Motion, Plaintiffs rely on the arguments set

forth in the Brief filed in support of this Motion and other Exhibits filed with that Brief.

8. To briefly summarize, and as more fully set forth in the accompanying Brief, Plaintiffs respectfully submit that recusal is appropriate under MCR 2.003 and the Due Process Clause of the Fourteenth Amendment, where the past relationship between Mr. Fieger and these Justices and their spouses reflects bias and prejudice against Mr. Fieger and the causes for which he advocates. These include the following:

- a. Corrigan, who has acted as complainant, seeking imposition of professional discipline against Mr. Fieger, should recuse herself from participating as Judge in reviewing charges of misconduct by him of a similar nature to those which she has initiated.
- b. Justices Markman, Young and Taylor, whose campaign literature attacked Mr. Fieger, should recuse themselves.
- c. Justices Corrigan, Markman, Young and Taylor have themselves been the subject of criticisms by Plaintiffs' counsel and should recuse themselves.
- d. Justice Young should recuse himself because of his

perceived "hate" relationship with Mr. Fieger in which he finds "honor".

- e. Justices Markman, Taylor and Young, on whose behalf has been taken the position that most litigation is frivolous and that Mr. Fieger is responsible and uses specious arguments, should recuse themselves.
- f. Justices Taylor, Corrigan, Young and Markman may harbor bias or prejudice against Plaintiffs' counsel arising out of the acrimonious controversies between Mr. Fieger and Governor Engler, and their respective political allies, including the debate over physician-assisted suicide and the 1998 gubernatorial campaign.
- g. The express positions regarding the ideological and political clashes between Mr. Fieger and Justices Markman, Taylor, and Young provide additional basis for recusal.
- h. The tremendous financial support which Justices Markman, Young, and Taylor have received from the Chamber of Commerce, whose members are

perceived to be at financial risk by Mr. Fieger's
advocacy, provides another basis for recusal.

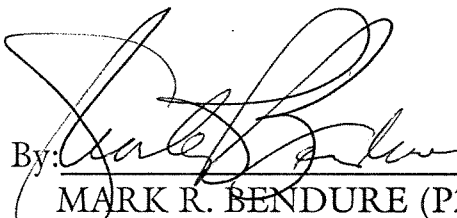
9. In sum, Plaintiffs submit that the interests of the parties, of justice, of the United States Constitution, and of maintaining public respect for the impartiality of this Court, would be served by the recusal sought in this Motion.

Respectfully submitted,

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Dated: February 2, 2005

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